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C O N F I D E N T I A L SECTION 01 OF 04 CARACAS 000168

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E.O. 12958: DECL: 10/02/2017
TAGS: [EPET](#) [ENRG](#) [EINV](#) [ECON](#) [VE](#)
SUBJECT: EXXONMOBIL MOVES TO FREEZE PDVSA'S WORLDWIDE ASSETS

REF: A. 2007 CARACAS 967

- [1](#)B. 2007 CARACAS 426
- [1](#)C. 2007 CARACAS 1281
- [1](#)D. 2007 CARACAS 2346

Classified By: Economic Counselor Andrew N. Bowen for Reason 1.4 (D)

[1](#)1. (C) SUMMARY: The Venezuelan press reported on February 6-7 the attachment of a bank account in New York and an English court's freezing of USD 12 billion in PDVSA assets worldwide. Initial press reports in Venezuela were exaggerated in both tone and content. ExxonMobil (XM) filed a request for arbitration against the BRV with the International Centre for Settlement of Investment Disputes (ICSID) in September 2006 followed by an arbitration claim for breach of contract against PDVSA and PDVSA affiliate PDVSA CN with the International Chamber of Commerce (ICC) on January 25. Both proceedings arise from the BRV's expropriation of XM's assets in Venezuela, primarily its equity stake in the Cerro Negro strategic association. On December 27, 2007 XM filed a complaint for order of attachment with a federal district court to block PDVSA from withdrawing funds from escrow accounts. (PDVSA was able to withdraw the funds following its pay off of Cerro Negro bondholders.) It is not clear what effect XM's actions will have on Cerro Negro supply contract negotiations for shipments to refineries where XM holds equity stakes. President Chavez threatened once again to cut off oil shipments to the U.S. if XM and the U.S. continued to pursue an "economic war" against Venezuela. XM's actions should not have an effect on PDVSA operations.
END SUMMARY

XM PLAYS HARDBALL

[1](#)2. (C) The Ambassador met briefly on February 8 with XM International Government Relations Advisor-Americas Milton

Chaves to discuss XM's recent actions to attach PDVSA's worldwide assets. Chaves began the conversation by stating that XM filed a request for arbitration against the BRV in September 2007 with ICSID for claims arising from the nationalization of the Cerro Negro strategic association. XM then filed an arbitration claim with the ICC on January 25 against PDVSA and PDVSA affiliate PDVSA CN for breach of contract.

13. (C) In conjunction with the ICC filing, a British court granted XM a freezing injunction that states PDVSA cannot remove from England or Wales any of its assets up to the value of USD 12 billion. In addition, it cannot dispose of any assets up to the value of USD 12 billion in any part of the world. Following the granting of the injunction, courts in the Netherlands and Netherlands Antilles attached PDVSA assets based on the UK injunction.

XM-PDVSA ARBITRATION TIMELINE

14. (U) Based on court documents supplied by oil analysts and conversations with contacts, the following is a detailed time line of XM and PDVSA's arbitration.

15. (SBU) September 26, 2006 XM files an arbitration claim against the Venezuelan government with ICSID. The original claim is based on the BRV's unilateral decision to raise royalty and income tax rates on Cerro Negro. The claims eventually expand to include five elements: 1) direct expropriation of XM's interests in Cerro Negro without compensation; 2) imposition of an extraction tax that allegedly violated an agreement for a low level of royalties;

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3) refusal to allow expansion of Cerro Negro under previously agreed terms; 4) income tax increases in violation of a previous agreement; and 5) imposition of production and export curtailments in violation of a previous agreement.

16. (SBU) May 1, 2007 PDVSA assumes operational control of the strategic associations (Reftel A). PDVSA bases its actions on a nationalization decree that President Chavez issues on February 26, 2007 (Reftel B).

17. (SBU) June 22-27, 2007 XM affiliate Mobil CN sends a series of letters to PDVSA and PDVSA CN stating they have violated the terms of the Cerro Negro strategic association contract. On June 26, the BRV signs agreements with the remaining international oil companies converting the heavy oil strategic associations into PDVSA-controlled joint ventures. Both XM and ConocoPhillips exit Venezuela (Reftel C).

18. (SBU) December 27, 2007 XM files a complaint for order of attachment with the U.S. District Court in the Southern District of New York. As a result of PDVSA's decision to pay off Cerro Negro bondholders, funds being held in escrow accounts to protect bondholders will be available for withdrawal. PDVSA CN's share of the funds is approximately USD 300 million. The court grants a freeze on PDVSA CN's share of the funds.

19. (SBU) January 24, 2007 The High Court of Justice in England grants a freezing injunction against PDVSA that covers USD 12 billion worth of assets worldwide. The injunction applies to PDVSA's assets "whether or not they are in its own name and whether they are solely or jointly owned". The term asset was defined to cover "any asset which (PDVSA) has the power, directly or indirectly, to dispose of or deal with as if it were its own". The order does not prohibit PDVSA from carrying out its "ordinary and proper course of business". The order also required PDVSA to provide XM with a list of all of its assets worldwide that exceed USD 5 million in value within five working days of service of the injunction. The English court will hold a

further hearing on the injunction on February 22, 2008.

ADDITIONAL COMPLICATION: SUPPLY CONTRACTS

¶10. (C) As reported in Reftel A, the Cerro Negro strategic association had six supply contracts with the Chalmette Refinery in Louisiana. Chalmette is a joint venture between XM and PDVSA. XM officials told Petroleum Attache (Petatt) in 2007 that some of the contracts were scheduled to expire in January 2008. BP Venezuela president Joe Perez told Petatt on January 23 that XM and Petromonagas (the joint venture that replaced Cerro Negro) were in discussions on renewing the contracts. He stated BP was confident that the parties would reach an agreement quickly since it was in both their interests to do so. BP holds a 16.67% stake in Cerro Negro/Petromonagas. XM officials have stated in the past that PDVSA would lose three to five dollars per barrel if it was forced to sell Petromonagas' production on the open market (Reftel A). (COMMENT: Although three to five dollars per barrel may not seem like a great deal of money due to the current high level of oil prices, we believe it would have a significant impact on PDVSA. Given PDVSA's precarious cash flow (Reftel D), it cannot afford to give up revenue. END COMMENT)

BRV REACTION: TEPID AT FIRST, THEN BOMBASTIC

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¶11. (C) Somewhat surprisingly, the BRV's initial reaction to media reports on February 6 and 7 announcing the English and New York courts' actions were tepid. XM's Chaves told the Ambassador that XM was surprised that the BRV had not reacted more forcefully. He also stated XM had been surprised at the amount of information, particularly false information, that appeared in the media and Internet.

¶12. (C) Energy Minister and PDVSA president Rafael Ramirez repeatedly stated in press conferences and a nationally televised address that XM's actions would not have an impact on PDVSA's operations. He also stressed neither the English nor New York court had rendered a final decision on the underlying claims in the dispute. Ramirez also claimed that the BRV was close to reaching a settlement with ConocoPhillips on compensation for its expropriated assets. Finally, Ramirez repeatedly stressed that PDVSA does not have USD 12 billion in assets in either the United Kingdom or the Netherlands. Local analysts have interpreted this final statement as evidence that PDVSA does not believe the English court's injunction applies to its global assets.

¶13. (C) President Chavez in his weekly Alo Presidente address on February 10 lashed out at XM. He claimed the attempt to freeze PDVSA assets was part of a conspiracy to destabilize Venezuela and said XM would never again "rob" Venezuela. He stated "the bandits of XM are imperialist bandits, white collar thieves, corrupters of governments, overthrowers of governments, they supported the invasion of Iraq and the bombardment and they continue supporting genocide in Iraq". He said if XM continued to pursue economic warfare against Venezuela, Venezuela would "suspend the supply of petroleum to the United States". (COMMENT: President Chavez' threat to cut off oil supplies to the United States is nothing new. He has repeatedly made it in the past. END COMMENT).

WHAT DOES THIS MEAN IN THE REAL WORLD?

¶14. (C) Although XM's recent actions in New York, England, the Netherlands and the Netherlands Antilles certainly increases the pressure on the BRV to pursue compensation negotiations, it will probably have little effect in the "operational" real world. (Press reports of the freeze had a significant impact on the valuation of PDVSA bonds.) As

noted in paragraph 9, the English injunction in no way limits PDVSA's ability to carry out normal operations. At most, it will serve as an impediment for the sale of assets and the use of proceeds from major asset sales in a limited number of secondary jurisdictions.

¶15. (C) XM's attorneys admitted as much in their filings with the English court. The attorneys began by arguing that PDVSA could easily transfer funds out of its bank accounts in England and Wales and restructure trading interests to move them beyond XM's reach absent the freeze. They also argued that it is clear that PDVSA was trying to divest itself of overseas refining interests and that the key drivers in its decisions were "where the refinery is located and when the refined product is sold to a foreign oil company".

¶16. (C) However, the attorneys then admitted that the majority of PDVSA's assets appear to be located in Venezuela. They also stated it would be "challenging to obtain pre-judgment relief" against Citgo's asset in the United States "as a matter of U.S. law". The filings state that absent pre-judgment relief there is a "strong likelihood" that PDVSA's U.S. assets will be dissipated. The filing then acknowledges "PDVSA's assets outside of Venezuela and the U.S. appear to be of modest value, compared to the value of

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the assets held in Venezuela and the U.S.".

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